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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

16 || Jenny Lisette Flores., *et al.*,

17 || Plaintiffs,

18 || v.

19 William Barr, Attorney General of the
United States, *et al.*.

Defendants.

Case No. CV 85-4544-DMG-AGRx

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION AND CONTEMPT
ORDER SHOULD NOT ISSUE**

Hearing: None set

22 Dated: June 26, 2019

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EX PARTE APPLICATION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 **PLEASE TAKE NOTICE** that pursuant to Fed. R. Civ. P. 65 and Local
4 Rule 7-19, Plaintiffs in the above-captioned matter, hereby apply *ex parte* to this
5 Court for a temporary restraining order and for issuance of an order to show cause
6 why a preliminary injunction should not issue. This *ex parte* application is based
7 upon this Application, the Memorandum of Points and Authorities below, the
8 concurrently-filed Declaration of Class Counsel Peter Schey and Supplemental
9 Declaration of Elyse D. Echtman and all exhibits thereto, all papers on file in this
10 action, and any oral argument of counsel the Court may hear. The Memorandum of
11 Points and Authorities in support of this Application is attached as Exhibit A.

12 The Plaintiffs bring this application on an *ex parte* basis because, as
13 described in the Motion attached, the conditions at multiple U.S. Customs and
14 Border Patrol (“CBP”) facilities are in non-compliance with the Jan. 17, 1997
15 Settlement Agreement in *Flores v. Reno et al.*, CV 85-4544 (RJK) (Px) (“Flores
16 Settlement Agreement”) and this Court’s June 27, 2017 Order, Docket No. 363.
17 The non-compliance has created a health crisis that is in need of immediate
18 attention in order to avoid further loss of life. Plaintiffs respectfully submit that *ex
19 parte* relief is therefore appropriate given that the facts in the Motion and its
20 supporting papers evidence that immediate and irreparable injury will result to
21 Plaintiffs before opposition can be heard.

Statement of Compliance with Civil Local Rule 7-19

Counsel for Defendants are:

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Pursuant to Civil Local Rule 7-19.1 and Fed. R. Civ. P. 65, counsel for the Plaintiffs informed the Monitor and counsel for the government of the substance

1 and date of this *ex parte* application. Declaration of Class Counsel Peter Schey ¶ 2;
 2 Supplemental Declaration of Elyse D. Echtman ¶¶ 4-7.

3 On June 19, 2019, Plaintiffs' counsel served a formal Notice of Non-
 4 Compliance (the "Notice") on Defendants and the Monitor pursuant to Section D.3
 5 of the October 5, 2018 Order Appointing an Independent Monitor, *Flores v.*
 6 *Sessions, et al.*, CV 85-4544-DMG (AGR), Docket No. 494 (the "Monitoring
 7 Order"), detailing grave violations at CBP Facilities that created a public health
 8 emergency requiring immediate attention. Echtman Decl. ¶ 4. Because of the
 9 public health crisis and the threat to lives of the children, Plaintiffs' counsel asked
 10 that the Monitor expedite Defendants' response time to the Notice to two business
 11 days, as provided for in Section D.3(b) of the Monitoring Order ("In an emergency,
 12 Class Counsel may request that the Monitor and the Court waive the time periods
 13 set forth in Section D.3 of this Order."). Echtman Decl. ¶ 5; Monitoring Order at
 14 20-21. The Monitor responded on June 21, 2019, acknowledging receipt of the
 15 Notice and indicating that the Monitor had begun an inquiry into it. Echtman Decl.
 16 ¶ 6.

17 On June 23, 2019, Plaintiffs provided Defendants and the Monitor with a
 18 Supplement to the Notice of Non-Compliance (the "Supplemental Notice"),
 19 supported by additional declarations from children at the CBP facilities in the El
 20 Paso and RGV sectors. Echtman Decl. ¶ 7. These declarations provided additional
 21 evidence substantiating the unsafe and unsanitary conditions and public health
 22 crises existing at these facilities. *Id.* ¶ 7. In the Supplemental Notice, Plaintiffs'
 23 counsel reiterated the request for the Monitor to expedite the government's
 24 response time, pursuant to Section D.3(b) of the Monitoring Order. *Id.* To date, the
 25 Monitor has not taken any action to expedite resolution of this dispute which is

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1 endangering the health and welfare of children, including infants, at the CBP
2 facilities. *Id.*

3 Plaintiffs have informed the Monitor that they intend to seek immediate relief
4 from this Court. *Id.* ¶ 8.

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6 Dated: June 26, 2019

/s/Peter Schey

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11 Attorneys for Plaintiffs

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